

STATE OF MICHIGAN  
COURT OF APPEALS

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FRANK R. HIX, JR.,

Plaintiff/Counter-Defendant-  
Appellant,

v

FRANK R. HIX, SR.,

Defendant/Counter-Plaintiff-  
Appellee.

UNPUBLISHED

March 6, 2007

No. 265104

Shiawassee Circuit Court

LC No. 03-009713-CZ

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Before: Whitbeck, C.J., and Bandstra and Schuette, JJ.

SCHUETTE, J. (*concurring*).

I concur in the result reached by my distinguished colleagues in the majority. However, I write separately, offering a different legal analysis resulting in reversal of the trial court. Specifically, I believe that the procedure set forth by the Legislature in the Mobile Home Commission Act (MHCA), MCL 125.22301 *et seq.*, is the only way a mobile home can be converted from personal property to real property. Further, I do not believe that plaintiff forfeited his ownership interest in the mobile home (as a joint owner with full rights of survivorship) by allowing the mobile home to be “affixed” to defendant’s land.

Under the MHCA, an owner may “affix” a mobile home to real property and thereby incorporate the home into the real property. MCL 125.2330i. A mobile home is considered “affixed” to the real property when (1) “[t]he wheels, towing hitches, and running gear are removed,” and (2) “[i]t is attached to a foundation or other support system.” MCL 125.2330i(11)(a). The owner may then submit an “affidavit of affixture” to the Secretary of State establishing that the mobile home has been incorporated into the real property. MCL 125.2330i(1). The mobile home *only* becomes real property, rather than personal property, when the Secretary of State receives such an affidavit. MCL 125.2330i(5); see also *Mortgage Electronic Registration Systems, Inc v Pickerell*, 271 Mich App 119, 124; 721 NW2d 276 (2006). The statute specifically provides that its provisions apply even if an interest was conveyed in the mobile home before the statute’s July 14, 2003 enactment. MCL 125.2330i(10).

While I agree that the mobile home in this case is clearly “affixed” to the property under MCL 125.2330i(11)(a), defendant never filed an “affidavit of affixture” as required by statute to inform the state that the mobile home had been incorporated into the real property. Therefore,

the mobile home was not converted into the real property and remained personal property, of which plaintiff was a joint owner with full rights of survivorship.

My distinguished colleagues point to the Legislature's use of the term "may" to support their conclusion that the MCHA is not the only way to convert a mobile home from personal property to real property. I disagree. Rather, I interpret the term "may" as presenting an option to mobile home owners for converting their personal property to real property, as opposed to mandating such a procedure. I do not believe that the term "may" suggests that there are other options for doing so. Further, the facts of *Ottaco, Inc v Gauze*, 226 Mich App 646; 574 NW2d 393 (1997), are inapplicable in this case. First, *Ottaco* was published in 1997, six years before MCL 125.2330i was enacted. Accordingly, an owner was not statutorily required to file an affidavit of affixture to transform a mobile home into real property at that time. Moreover, the legal question at issue in *Ottaco* was whether the mobile home had been incorporated into the real property for purposes of transfer by tax deed. *Ottaco, supra* at 650-651. MCL 125.2330i clearly defines affixture for purposes of the statute.

Additionally, I disagree that plaintiff forfeited his ownership interest in the mobile home by allowing it to be "affixed" to defendant's land. Rather, because defendant failed to follow the proper procedures for converting the mobile home to real property, the mobile home remained personal property, which was jointly owned by plaintiff and defendant. Accordingly, plaintiff continued as a joint owner of the mobile home with full rights of survivorship until the trial court extinguished his ownership interest in the property to cancel out the debt he owed to defendant.

/s/ Bill Schuette